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### ANALYSIS FOR STATE OF NEVADA

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#### Statute:

NEV. REV. STAT. §§ 338.161 to 168.

#### Summary:

Authorizes public bodies to accept unsolicited proposals to develop, construct, improve, maintain or operate transportation facilities. Toll bridge and toll road projects, however, are prohibited under this statute.

### Key Elements of Nevada's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Unsolicited only.	§338.163 outlines the contents of an unsolicited proposal and §338.164 outlines the process for the public body to thereafter solicit competing proposals.
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	Yes.	§§338.168 and 338.163(2)(h)(4).
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?	By contract.	Under §338.166(5)(c), the PPP agreement must include a provision concerning tolls or any other user fees to be charged for the use of the transportation facility, "other than a bridge or a road."
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	No express provision.	But see §338.168 for general authority.
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	Yes.	Under §338.161, a "transportation facility" means a road, railroad, bridge, tunnel, overpass, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the transportation of persons or goods, including, without limitation, any other property that is needed to operate the facility. The definition, however, explicitly excludes toll bridges and toll roads from the PPP law.

8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No express provision.	
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	No.	Toll bridges and toll roads are explicitly excluded from the PPP law.
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	No express provision.	
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No.	§338.166(3) requires affected local governmental entities to submit any comments they have on the proposed transportation project within 30 days to the relevant public body for its consideration and to indicate whether or not the proposed project is compatible with local and statewide transportation plans.
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	No express provision.	
14.	Are there explicit exemptions/supplemental procurement authority from the application of the state's general procurement laws?	No express provision.	
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§338.167. §338.166(5)(b), however, does not state a maximum term after which the termination date must occur.
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	No express provision.	
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No express provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	Not explicit.	Implied by §338.166(2) and (4).
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	

20.	Can the agency charge application fees to offset its proposal review costs?	Yes.	Under §338.166(4), the public body may charge a "reasonable fee" to cover its proposal review costs, "including, without limitation, reasonable fees for the services of an attorney or a financial or other consultant or advisor, to be collected before the public body accepts the request or proposal for processing, review and evaluation."
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	No express provision.	Under §338.164, the public body appears to have discretion to establish when competitive proposals are due.
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	N/A.	
23.	Are there any non-compete clause prohibitions?	No express provision.	
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?		Appears to be broader than just the NV DOT; under §338.162, a "public body" may authorize a private entity to develop a project under the PPP law.
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	Yes.	§338.166(1) provides only very general guidance. It lists certain factors that the public body should consider in determining whether a proposed transportation facility serves a "public purpose."
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No.	
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	No express provision.	
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§§338.162 and 167.

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